

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3663 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

GIRISHKUMAR RAMJIBHAI KHAR

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE, Advocate for the Petitioner.

MR UR BHATT,AGP for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 31/07/96

ORAL JUDGEMENT

Girish Ramjibhai Kahar, being aggrieved by the order of his detention dated 7-2-1996 passed under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985, by the Commissioner of Police, Surat City, has approached this Court by way of this petition under Article 226 of the Constitution of India

challenging the legality and validity of the said order.

The detaining authority has relied on the three criminal cases registered against the detenu for offences punishable under Chapters XVI and XVII of the Indian Penal Code and the statements of three witnesses of the locality where the detenu is alleged to have been carrying on his anti-social and naferious activities. Taking into consideration this material, the detaining authority was of the view that the detenu is a "dangerous person" within the meaning of section 2 (c) of the said Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order it was necessary to pass the order of detention against the detenu and, therefore, the impugned order is passed, which is under challenge in the present petition.

Mr. Anil Dave, learned Advocate, appearing for the petitioner has raised number of contentions. However, as this Court is impressed by, and this petition also can be disposed of on , the contention that the representation made by the detenu was not considered expeditiously, it is not necessary to refer to and deal with the other contentions.

Mr. Dave submitted that the detenu , through his Advocate, sent a representation dated 6-5-1996 addressed to the Home Minister of the State raising eight grounds therein. Mr. Dave has produced a copy of the said representation alongwith the registration receipt dated 6-5-96 issued by the postal department as also the undated postal acknowledgement receipt received by Mr. Dave . The said acknowledgement receipt was received by Mr. Dave on 13-5-1996 as can be seen from the endorsement made by him on the copy of the representation. In view of this, Mr. Dave submitted that the office of the Home Minister must have received the said representation on any day between 7-5-96 and 12-5-96. Inspite of that, the office of the Home Minister rejected the representation by its order dated 20-5-96. Mr. Dave, therefore, submitted that in view of this delay in considering the representation, the continued detention of the detenu is required to be held as having become void and the petition is required to be allowed only on this ground.

Now, in the instant case, the respondents, though served, have not filed any affidavit. However, Mr. Bhatt, learned Assistant Government Pleader, has produced the case file. Perusing the same, it appears that the

representation dated 6-5-96 was received in the office of the Home Minister on 18-5-96 and it was rejected on 20th May 1996. A copy of the order dated 20th May 1996 alongwith a copy of the representation was sent to the Commissioner of Police .Mr.U.R.Bhatt, learned Assistant Government Pleader for the respondents, submitted that the fact that the representation was received on 18-5-96 and the same was decided on 20th May 1996, there was no delay in considering the said representation. It is not possible to accept this submission of Mr.Bhatt for the simple reason that the registered acknowledgement slip does not state the date of receipt of the representation by the office of the Home Minister and Mr. Dave, learned Advocate for the detenu, has stated at the bar that the registered A/D slip was received by him on 13-5-1996 and he has made an endorsement thereon to that effect. In view of this factual position there are two versions about the date of receipt of the representation by the office of the Home Minister. According to Mr. Dave for the detenu the representation was received by the office of the Home Minister on any day between 7th and 12th May 1996 whereas the case file shows the date of the receipt of the representation as 18th May 1996. Assuming that 18th May 1996 as per the case file shown to this Court by Mr.Bhatt is the correct date of receipt of the representation, even then, the petition is required to be allowed on the ground of considering the gridvances made and contentions raised by the detenu in the representation, more particularly grounds Nos.4 and 6 thereof in a casual manner. Even though the detaining authority-the Commissioner of Police, Surat, was asked to offer his comments with respect to grounds Nos.4 and 6 viz non-supply of the copy of the chargesheet and supply of the legible documents, without waiting for his comments on the said two vital points, the representation was rejected in a casual and mechanical manner and without waiting for the comments of the detaining authority thereon. In his representation, the detenu raised eight grounds against his detention. In all the grounds, except grounds Nos.4 and 6, the detenu has denied his involvement in the allegations. However, in grounds Nos.4 and 6 the detenu has clearly averred that the copy of the chargesheet has not been supplied to him and certain papers are illegible. He therefore demanded the the copy of the chargesheet and the legible copies of the documents . Now, in order to verify the correctness of this averment, the Home Ministry called for the comments of the Commissioner of Police ,Surat on 20th May 1996. However, without receiving the same, by order dated 20th May 1996, the representation of the detenu was rejected. I am, therefore, of the opinion that the

representation of the detenu has been rejected mechanically and in a very vasual manner. The fact that the Commissionewr of Police, in compliance with the order dated 20th May 1996, by his letter dated 5-6-1996 (a copy is produced by Mr. Dave for the detenu) , replied to the Secretary, Home Department, that the copies demanded by the detenu were already supplied to him while serving the order of detention, leaves no manner of doubt that the representation of the detenu was rejected in a casual manner and mechanically much before the letter dated 5-6-96 addressed by the detaining authority . This has also resulted in the continued detention of the detenu illegal.

In the result, the petition is allowed. The detention order dated 7-2-96 is quashed and set aside. The detenu Girishkumar Ramjibhai Kahar is directed to be set at liberty forthwith if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.

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